

SB 158 -- PROPONENT

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I am K. Paul Stahl. I am the Chief Deputy Lewis and Clark County Attorney. I am also one of the 1st Judicial District's representatives on the State Bar Board of Trustees. I speak for neither the County Attorney's office nor the State Bar.

What follows are the reasons that an immediate appointment (January of 2010 rather than January of 2011) of a judge in the 1st Judicial District is not only necessary, but critical to avert a looming crisis.

- I am a proponent of SB 158 in any form. However, I think the bill should be amended to remove the amendments inserted by the Senate.
- As introduced, SB 158 provided for 6 new judges – 2 to be appointed - in the 1st and 11th districts – and 4 others to be elected in the 8th, 13th, and 18th, even though all of these districts are severely short of judges and need immediate relief.
- In the independent study, the 1st and 11th Districts were entitled to a second additional judge each, but the judicial branch and the interim law and justice committee compromised the immediate need in the other districts in an attempt to create, as soon as possible, judge positions in the 1st and the 11th districts because of the great need (some would call it a crisis).
- The Senate amended the original bill to require election of all new judges.
- Helena has been passed over for at least 3 sessions and maybe 4.
- The statistics used to compile the recommendation from the independent study were taken more than 2 years ago. In the past year alone in Lewis and Clark County, felony filings are up 13%; over the previous 2 year period (not a part of the study) felony filings are up 44%. Before the amended bill could be implemented, the felony filings could increase 90% since the time the study was made, almost double.
- The predictions are that Helena's population will double by 2025; that growth will not occur all at once but incrementally, so each year the 1st Judicial District gets further behind. Every year matters.
- The creation of the statewide public defender office, while a good thing, is increasing the criminal burden on the Judges in Helena significantly, because of the Defenders' office relatively new penchant for paper and motions. And all of this after the study was made.
- Because criminal matters have priority under the law, civil matters are significantly delayed. At present, a hearing more than a day or two is approaching 2 years before it can be scheduled. This will be significantly greater in 2011 by the time the amended bill takes effect. (In Minneapolis, trials or hearing must occur within 1 year; in Los Angeles, the time is 1 year.)
- Mental commitments are up 30% since 2005; what will they be in 2011??
- In the last year of the study, youth court petitions increased in that year alone more than 100%. They have had a corresponding increase since that time.

- Abuse and neglect cases are up 140% since 2005, only part of which were included in the study.
- The judicial branch of government is a co-equal partner with the legislature. But, District Courts do not have any options but to hear cases. They cannot table cases; they cannot put off until the next session a criminal's right to a hearing. They cannot control what comes before them. Courts are compelled by the Constitution, not just laws, to ensure due process and equal protection. There are no shortcuts.
- In the Senate, the judges testified that it takes at least a year for a judge to begin to function at capacity; that would be 2012 before the 1st Judicial District effectively has 4 judges. If the 1st judicial needed two judges in 2007, how many more will be needed in 2012?
- As the lawyer representative for the 1st Judicial District on the State Bar of Montana Board, I have had many civil lawyers comment and complain about the length of time it takes to resolve issues. There is serious concern that justice delayed is justice denied. Lawyers in the 1st Judicial District are very concerned that citizens are being denied their rights under the Constitution.
- This bill is not about judges working weekends and nights. This bill is about access to justice by the citizens of the 1st Judicial District. If you are seeking a divorce, and it and child custody are contested, and a hearing is required, waiting 2 years to get on with life is not justice. If there is a contract action because you bought a house, borrowed a significant amount of money, and the house is a mess, and you have nowhere else to live, waiting 2 years for resolution is not justice. If your subdivision has been denied, and you believe the county has applied the law wrongly, and you have borrowed significant amounts of money and spent it in preliminary improvements, waiting 2 years is not justice.
- A senator from Billings observed that the case load in Billings was greater than in the 1st Judicial District. The recommendation was prepared after a year-long study and a cataloging of the time spent by each judge on cases. Because of the high profile and significantly complex cases in the 1st, in part because it is the seat of state government, Helena was at the top of the list.
- The outcomes of the study will be so outdated by the time a judge takes the bench in 2011, the 1st Judicial District will, more likely than not, be no better off than it is now –which is of serious concern.
- The study indicates that there should be a 70% increase of judges in the 1st and 11th; a 40% increase in the 13th; a 33% increase in the 18th; a 20% increase in the 8th; the higher the percentage, the bigger the need. The legislature should have serious concerns about access to justice for the people living in these districts.
- The Lewis and Clark County Commission understands the gravity of the issue here and is in favor of the original bill. It has committed space and facilities to house a new judge as soon as possible, hopefully in January of 2010.

Of course the 800-pound gorilla in the room for one side is giving the Governor the power to appoint. (A significant number of judges have been appointed in the last 20 years; only one appointed judge in the last 20 years has failed to win election, so the appointments have not been out of line. Prior to this year's election, 5 out of 7 Supreme Court Justices originally took the bench as appointees.)

The other 800-pound gorilla elephant in the room for the opposite side is the Governor's budget. (The difference between the original bill and the amended bill is insignificant in the larger context of giving the courts the necessary resources to meet minimum Constitutional requirements of due process and equal protection.)

SB 158, amended or otherwise, is about access to justice; it is not a judge's relief bill. It is about the Court's Constitutional responsibility to provide due process and equal protection to the citizens of Montana. As economic conditions deteriorate, the need for an adequate number of judges is only going to increase.

Please pass SB 158. Please remove the Senate amendments.